

Amendment No. 1 to SB9014

Bailey
Signature of Sponsor

AMEND Senate Bill No. 9014

House Bill No. 9077*

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, is amended by adding the following as a new title:

Title 14 – COVID-19

Chapter 1 – General Provisions

14-1-101. Definitions.

As used in this title, unless the context otherwise requires:

(1) "Adverse action" means to:

(A) Discriminate against a person by denying the person employment, credit, insurance, access, products, services, or other benefits; or

(B) Discharge, threaten, or otherwise discriminate against an employee in any manner that affects the employee's employment, including compensation, terms, conditions, locations, rights, immunities, promotions, or privileges;

(2) "Applicant" means a person who has applied for employment with an employer;

(3) "Arising from COVID-19" means caused by or resulting from the actual, alleged, or possible exposure to or contraction of COVID-19, or caused by or resulting from services, treatment, or other actions in response to COVID-19, including, but not limited to:

(A) Implementing policies and procedures to prevent or minimize the spread of COVID-19; however, "arising from COVID-19" does not include implementing policies and procedures that violate this title;

(B) Testing;

(C) Monitoring, collecting, reporting, tracking, tracing, disclosing, or investigating COVID-19 exposure or other COVID-19-related information;

(D) Using, designing, manufacturing, providing, donating, or servicing precautionary, diagnostic, collection, or other health equipment or supplies, such as personal protective equipment;

(E) Closing or partially closing to prevent or minimize the spread of COVID-19;

(F) Delaying or modifying the schedule or performance of any medical procedure; or

(G) Providing services or products in response to government appeal or repurposing operations to address an urgent need for personal protective equipment, sanitation products, or other products necessary to protect the public;

(4) "COVID-19" means the novel coronavirus, SARS-CoV-2, and coronavirus disease 2019, commonly referred to as COVID-19, including any variant of SARS-CoV-2 or COVID-19;

(5) "COVID-19 vaccine" means a substance used to stimulate the production of antibodies and provide protection against COVID-19, prepared from the causative agent of COVID-19, its products, or a synthetic substitute, and treated to act as an antigen without inducing a COVID-19 infection;

(6) "Employer" means a person, private business, or governmental entity employing one (1) or more persons within this state;

(7) "Face covering" means a protective covering designed to be worn over the nose and mouth to reduce the spread of COVID-19, but "face covering" does not include an industry required mask;

(8) "Governmental entity":

(A) Means a state department, agency, or political subdivision, including a city, town, municipality, metropolitan government, county, utility district, public building authority, housing authority, emergency communications district, county board of health, a development district created and existing pursuant to the laws of this state, or an instrumentality of government created by one (1) or more local governmental entities; and

(B) Does not include a school; LEA, as defined in § 49-1-103; or a medicare certified provider or medicaid certified provider, but only to the extent that the medicare certified provider or medicaid certified provider is subject to a valid and enforceable medicare or medicaid condition of participation that imposes a requirement contrary to this title;

(9) "Healthcare provider" means a healthcare practitioner, person, or facility licensed, authorized, certified, registered, or regulated under title 33, title 63, title 68, federal law or order, or an executive order of the governor, including but not limited to any employees, agents, or contractors of such a practitioner, person, or facility, and residents, interns, students, fellows, or volunteers of an accredited school or of such school's affiliated teaching or training hospitals or programs in this state;

(10) "Industry required mask" means a face covering, protective cover, or prophylactic device designed to be worn over the nose and mouth for a particular industry that may prevent the spread of COVID-19, but that would be used in the particular industry regardless of the risk of exposure to COVID-19;

(11) "Legal guardian" means a person or entity that has the legal authority to provide for the care, supervision, or control of a minor as established by law or court order;

(12) "Minor":

(A)

(i) Means a person who has not attained eighteen (18) years of age; and

(ii) Does not include a person who has been emancipated pursuant to title 29, chapter 31; and

(B) Does not include a person who is seventeen (17) years of age and is enlisted in the military;

(13) "Monoclonal antibodies" means bamlanivimab plus etesevimab, casirivimab plus imdevimab, sotrovimab, or any other anti-COVID-19 monoclonal antibody products that target the spike protein of COVID-19 and are approved or authorized by the federal food and drug administration for use as a treatment or prophylaxis for a COVID-19 infection;

(14) "Person" means an individual;

(15) "Private business" means a person, sole proprietorship, corporation, limited liability company, partnership, trust, association, nonprofit organization described in § 501(c) of the Internal Revenue Code that is exempt from federal income taxation under § 501(a) of the Internal Revenue Code (26 U.S.C. § 501(a)), or any other legal or non-governmental entity whether formed as a for-profit or not-for-profit entity engaged in business or commerce in this state, but does not include a:

(A) School; or

(B) Medicare certified provider or medicaid certified provider, but only to the extent the medicare certified provider or medicaid certified provider is subject

to a valid and enforceable medicare or medicaid condition of participation that imposes a requirement contrary to this title;

(16) "Proof of vaccination" means physical documentation or digital storage of a person's receipt of a COVID-19 vaccine;

(17) "Publicly-funded employer" means an employer that receives grant funds or tax credits from this state;

(18) "Publicly-funded private business" means a private business that receives grant funds or tax credits from this state;

(19) "Quarantine" means:

(A) The limitation or restriction of a person's freedom of movement or isolation of a person, or preventing or restricting access to premises upon which the person or the cause or source of COVID-19 may be found, for a period of time to prevent the spread of COVID-19; and

(B) Limiting or restricting the operation of a private business to prevent the spread of COVID-19;

(20) "School" means:

(A) A public elementary or secondary school operated by a local education agency or by the state with public funds, including a charter school;

(B) A publicly-operated child care agency, as defined in § 71-3-501; child care program, as defined in § 49-1-1102; preschool; or nursery school; and

(C) A public postsecondary educational institution;

(21) "School property" means all real property, improvements to real property, and facilities used for school purposes; and

(22) "Severe conditions" means:

(A) The governor has declared a state of emergency for COVID-19 pursuant to § 58-2-107; and

(B) A county has an average rolling fourteen-day COVID-19 infection rate of at least one thousand (1,000) new known infections for every one hundred thousand (100,000) residents of the county based on the most recent data published by the department of health. For purposes of this subdivision (22)(B), the number of new cases per one hundred thousand (100,000) persons within the last fourteen (14) days is calculated by adding the number of new cases in the county in the last fourteen (14) days divided by the population in the county by one hundred thousand (100,000).

14-1-102. Findings.

The general assembly finds that:

(1) Setting forth the rights of people in the context of COVID-19 restrictions in a statute assists the citizens of this state in the enforcement and protection of their rights and creates a safe harbor for those desiring to avoid litigation;

(2) Tennessee, as a great southern state within our federal system of government, is free to enact laws to protect the health and safety of its citizens under the police powers inherent to all states of a federal system of government; and

(3) Consistent with our constitutionally recognized and inalienable right of liberty, every person within this state is and must remain free to choose or to decline to be vaccinated against COVID-19 without penalty or threat of penalty.

14-1-103. Broad construction to safeguard liberty.

The purpose of this title is to safeguard the constitutional rights and liberty interests of persons during the COVID-19 pandemic. This title must be construed broadly to effectuate the purpose described in this section.

14-1-104. Construction with other laws.

(a) Notwithstanding any other law to the contrary, a governmental entity or public official shall not suspend any provision of this title, regardless of whether there is a state of emergency.

This subsection (a) does not prohibit the governor from suspending a provision of this title pursuant to title 58, chapter 2, if the governor has declared a state of emergency.

(b) This title is in addition and supplemental to all other provisions of state law; wherever the application of this title conflicts with the application of other provisions of state law, this title prevails.

Chapter 2 – Uniform Standards

14-2-101. COVID-19 vaccine mandates by governmental entities.

A governmental entity, school, or local education agency shall not mandate that a:

- (1) Person receive a COVID-19 vaccine; or
- (2) Private business or school require proof of vaccination as a condition to access the private business's or school's premises or facilities or to receive the benefits of the private business's or school's products or services.

14-2-102. COVID–19 vaccine status.

A private business, governmental entity, school, or local education agency shall not compel or otherwise take an adverse action against a person to compel the person to provide proof of vaccination if the person objects to receiving a COVID-19 vaccine for any reason.

14-2-103. Face coverings generally.

(a) Notwithstanding any law to the contrary and except as otherwise provided in subsection (c):

- (1) A publicly-funded private business or governmental entity shall not require a person to wear a face covering as a condition to access the publicly-funded private business's or governmental entity's premises or facilities, or to receive the benefits of the publicly-funded private business's or governmental entity's products or services, unless severe conditions exist and the requirement is in effect for no more than fourteen (14) days; and
- (2) A publicly-funded employer shall not require an employee to wear a face covering as a term or condition of employment or take an adverse action against an

employee for failing to wear a face covering, unless severe conditions exist at the time the requirement is adopted and the requirement is in effect for not more than fourteen (14) days.

(b) A publicly-funded private business, governmental entity, or publicly-funded employer may renew its face covering requirement for additional fourteen-day periods if severe conditions continue to exist each time the face covering requirement is renewed. If, at the end of a fourteen-day period, severe conditions no longer exist, then the publicly-funded private business, governmental entity, or publicly-funded employer shall not renew its face covering requirement or otherwise require a person to wear a face covering as a condition to access its premises or facilities; to receive the benefits of its products or services; or as a term or condition of employment.

(c) Notwithstanding subsection (a), a publicly-funded private business, governmental entity, or publicly-funded employer shall not require a person to wear a face covering if the person provides documentation from the person's healthcare provider that wearing a face covering is contraindicated for the person, or if the person objects to wearing a face covering because of the person's sincerely held religious belief.

(d) This section does not authorize a person to access the premises or facilities of a publicly-funded private business, governmental entity, or publicly-funded employer, or to receive the benefits products or services of a publicly-funded private business, governmental entity, or publicly-funded employer, if the person is otherwise prohibited from accessing its premises or facilities, or from receiving the benefits of its products or services.

14-2-104. Face coverings for schools.

(a) Notwithstanding title 49 or any other law to the contrary and except as otherwise provided in subsection (c), a school or a governing body of a school shall not require a person to wear a face covering while on school property unless:

(1) The principal or president of the school submits a written request to the school's governing body for the adoption of a policy requiring all persons on school property to wear a face covering;

(2) Severe conditions exist;

(3) The school's governing body adopts such a policy on a school-by-school or campus-by-campus basis and only:

(A) For the school for which a request is submitted by the principal or president pursuant to subdivision (a)(1);

(B) If all other conditions or requirements of this subsection (a) exist at the time the policy is adopted; and

(C) If the policy is in effect for no more than fourteen (14) days;

(4) The school provides face coverings for persons twelve (12) years of age and older that meet the U.S. National Institute for Occupational Safety and Health N95 classification of air filtration, meaning that the face covering filters at least ninety-five percent (95%) of airborne particles, including droplets containing COVID-19; and

(5) The school provides age-appropriate face coverings for persons under twelve (12) years of age, but over five (5) years of age, that provide air filtration similar to the face coverings described in subdivision (a)(4).

(b) A principal or president of a school may submit a written request to the school's governing body to renew the face covering requirement for the school for an additional fourteen-day period if the requirements of subsection (a) exist at the time the face covering requirement is renewed. If, at the end of a fourteen-day period, one (1) or more of the requirements or conditions of subsection (a) no longer exist, then a school shall not renew the school's face covering requirement or otherwise require a person to wear a face covering on school property.

(c) Notwithstanding subsection (a), a school shall not require a person to wear a face covering if the person provides documentation from the person's healthcare provider that

wearing a face covering is contraindicated for the person, or if the person objects to wearing a face covering because of the person's sincerely held religious belief.

(d) Notwithstanding subsection (a):

(1) A school shall, to the extent practicable, provide a reasonable accommodation pursuant to the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.) to a person who provides a written request for a reasonable accommodation to the principal or president of the school. If the person requesting a reasonable accommodation under this subsection (d) is a minor, then the person's parent or legal guardian must provide the written request on the minor's behalf.

(2) The principal or president of the school shall evaluate the request on behalf of the school and, to the extent practicable, provide a reasonable accommodation. The principal or president shall issue a decision approving or denying the request in writing. If the principal or president denies the request, then the grounds for denial must be provided in the principal's or president's written decision. If the principal or president approves the request, then the school shall place the person in an in-person educational setting in which other persons who may place or otherwise locate themselves within six feet (6') of the person receiving the reasonable accommodation for longer than fifteen (15) minutes are wearing a face covering provided by the school that:

(A) For persons twelve (12) years of age or older, meets the U.S. National Institute for Occupational Safety and Health N95 classification of air filtration, meaning that the face covering filters at least ninety-five percent (95%) of airborne particles, including droplets containing COVID-19; or

(B) For persons under twelve (12) years of age, but over five (5) years of age, is age-appropriate and provides air filtration similar to the face coverings described in subdivision (d)(2)(A).

(e) The governing body of a school shall not use state funds to mandate or require students to wear face coverings in violation of this section. If a school's governing body violates

this subsection (e), then the commissioner of education may withhold future distributions of school funds from a local education agency in the amount of the state funds used in violation of this section, or the attorney general and reporter may initiate legal proceedings to recover all state funds used in violation of this subsection (e).

(f) This section does not authorize a person to access a school's property or to receive the benefits of a school's services, if the person is otherwise prohibited from accessing the school's property, or from receiving the benefits of the school's services.

Chapter 3 – Unemployment Benefits Relative to COVID-19

14-3-101. Unemployment benefits.

(a) The disqualification from receipt of unemployment benefits provided in § 50-7-303(a)(1)(A) does not apply to a claimant who left employment because the claimant's employer, as defined in § 50-7-205, required its employees to receive a COVID-19 vaccine and the claimant failed or refused to receive a COVID-19 vaccine.

(b) Unemployment benefits shall not be reduced or denied under title 50, chapter 7 to an otherwise eligible claimant who left employment due to the claimant's failing or refusing to receive a COVID-19 vaccine.

(c) This section entitles an otherwise eligible claimant to a retroactive payment of unemployment benefits if the claimant was denied benefits on grounds that the claimant's separation from employment for failing or refusing to receive a COVID-19 vaccine was insufficient for benefits.

Chapter 4 – Healthcare Standards of Practice

14-4-101. Sole authority to quarantine.

(a) Notwithstanding any law to the contrary, the commissioner of health has the sole authority to determine quarantine guidelines for:

(1) A person if the person tests positive for COVID-19. The quarantine of a person must be lifted if the person receives a negative antigen detection test result or a negative molecular diagnostic test result at any time during the quarantine period; and

(2) A private business or school for purposes of closing the private business or restricting the operation of the private business for purposes of COVID-19. The quarantine of a business must be lifted as soon as practicable after the commissioner is satisfied that the conditions at the business do not present a serious public health or safety threat with respect to the spread of COVID-19.

(b) A local health entity or official, mayor, governmental entity, or school does not have the authority to quarantine a person or private business for purposes of COVID-19.

(c) The commissioner may only establish quarantine guidelines by rules promulgated pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

14-4-102. Monoclonal antibodies.

Notwithstanding any guidance or advice received from a governmental entity to the contrary, a healthcare provider shall exercise independent professional judgment when determining whether to recommend, prescribe, offer, or administer monoclonal antibodies to a patient as a treatment or prophylaxis against COVID-19.

14-4-103. Mature minor doctrine.

(a) Except as provided in subsection (b), a healthcare provider shall not provide a patient who is a minor with a COVID-19 vaccine without first obtaining written consent from the minor patient's parent or legal guardian.

(b) Subsection (a) does not apply if a healthcare provider, in the provider's independent professional judgment, suspects that the minor may be subjected to abuse, as defined in § 37-1-102, by a parent or legal guardian, or is a dependent and neglected child, as defined in § 37-1-102. If the exception provided in this subsection (b) applies, then the common law applies to the minor's capacity to consent to receiving a COVID-19 vaccine.

Chapter 5 – Liability

14-5-101. Clear and convincing standard for liability.

(a) Except as otherwise provided in this title, there is no claim against a person for loss, damage, injury, or death arising from COVID-19, unless the claimant proves by clear and

convincing evidence that the person proximately caused the loss, damage, injury, or death by an act or omission constituting gross negligence or willful misconduct.

(b)

(1) In any claim alleging loss, damage, injury, or death arising from a COVID-19 infection, the claimant must file a verified complaint pleading specific facts with particularity from which a finder of fact could reasonably conclude that the alleged loss, damage, injury, or death was caused by the defendant's gross negligence or willful misconduct.

(2) In any claim alleging loss, damage, injury, or death based on a COVID-19 infection, the claimant must also file a certificate of good faith stating that the claimant or claimant's counsel has consulted with a physician duly licensed to practice in this state or a contiguous state, and the physician has provided a signed written statement that the physician is competent to express an opinion on the contraction of COVID-19, and, upon information and belief, believes that the alleged loss, damage, injury, or death was caused by an alleged act or omission of the defendant or defendants.

(3) The failure of a claimant to satisfy the requirements of subdivisions (b)(1) and (2), if required by subdivision (b)(2), makes the action subject to dismissal with prejudice upon motion of the defendant.

(c) This chapter does not:

(1) Create a cause of action;

(2) Eliminate a required element of any existing cause of action;

(3) Affect workers' compensation claims under the Workers' Compensation Law, compiled in title 50, chapter 6, including the exclusive application of such law; or

(4) Amend, repeal, alter, or affect any immunity, defense, limitation of liability, or procedure available or required under law or contract.

(d) Unless otherwise prohibited by the United States or Tennessee Constitution, this chapter applies to claims arising from COVID-19 except those for which, on or before August 3, 2020:

- (1) A complaint or civil warrant was filed;
- (2) Notice of a claim was given pursuant to § 9-8-402; or
- (3) Notice was satisfied pursuant to § 29-26-121(a)(3) or § 14-5-101(b).

(e) As used in this section, "person" means an individual, healthcare provider, sole proprietorship, corporation, limited liability company, partnership, trust, religious organization, association, nonprofit organization described in 501(c) of the Internal Revenue Code that is exempt from federal income taxation under 501(a) of the Internal Revenue Code, 26 U.S.C. 501(a), or any other legal entity whether formed as a for-profit or not-for-profit entity.

14-5-102. Termination date.

This chapter terminates on July 1, 2022, but continues to apply to any loss, illness, injury, or death occurring before July 1, 2022, to which none of the exceptions listed in § 14-5-101(d) apply.

Chapter 6 – Miscellaneous

14-6-101. Anti-commandeering.

(a) Public funds of this state, or any political subdivision of this state, shall not be allocated for the implementation, regulation, or enforcement of any federal law, executive order, rule, or regulation that mandates the administration of a COVID-19 countermeasure.

(b) Personnel or property of this state, or any governmental entity of this state, shall not be allocated for the implementation, regulation, or enforcement of any federal law, executive order, rule, or regulation that mandates the administration of a COVID-19 countermeasure.

(c) As used in this section, "countermeasure" has the same meaning as "covered countermeasure" as that term is defined in the Public Readiness and Emergency Preparedness (PREP) Act, codified at 42 U.S.C. § 247d-6d.

14-6-103. Remedies.

(a) A person injured as a result of a violation of chapter 2 or § 14-4-103 of this title is entitled to maintain a private right of action for injunctive relief and to recover compensatory damages and reasonable attorneys' fees against an alleged violator.

(b) As used in this section, "funding" means state grant funds and state tax credits.

SECTION 2. Tennessee Code Annotated, Section 9-8-307(j), is amended by adding the following language to the end of the subsection:

This subsection (j) terminates on July 1, 2022, but continues to apply to any loss, illness, injury, or death occurring before July 1, 2022, to which none of the exceptions listed in § 14-5-101(d) apply.

SECTION 3. Tennessee Code Annotated, Sections 9-8-307(j), 29-20-205(10), 29-20-310(f)(1), 49-7-159, are amended by deleting the language "29-34-802(a)" and substituting instead the language "14-1-101".

SECTION 4. Tennessee Code Annotated, Sections 9-8-307(j), 29-20-205(10), and 49-7-159, are amended by deleting the language "29-34-802(c)" and substituting instead the language "title 14, chapter 5".

SECTION 5. Tennessee Code Annotated, Section 29-20-205(10), is amended by adding the following language to the end of the subdivision:

This subdivision (10) terminates on July 1, 2022, but continues to apply to any loss, illness, injury, or death occurring before July 1, 2022, to which none of the exceptions listed in § 14-5-101(d) apply.

SECTION 6. Tennessee Code Annotated, Section 29-20-310(f), is amended by adding the following language as a new subdivision:

This subsection (f) terminates on July 1, 2022, but continues to apply to any loss, illness, injury, or death occurring before July 1, 2022, to which none of the exceptions listed in § 14-5-101(d) apply.

SECTION 7. Tennessee Code Annotated, Title 29, Chapter 34, Part 8, is amended by deleting the part.

SECTION 8. Tennessee Code Annotated, Section 49-7-159, is amended by adding the following language to the end of the section:

This section terminates on July 1, 2022, but continues to apply to any loss, illness, injury, or death occurring before July 1, 2022, to which none of the exceptions listed in § 14-5-101(d) apply.

SECTION 9. Tennessee Code Annotated, Section 50-7-303(a)(1), is amended by adding the following as a new subdivision:

(C) The disqualification provided in subdivision (a)(1)(A) does not apply to a claimant who left employment because the claimant's employer required its employees to receive a COVID-19 vaccine, as defined in § 14-1-101, and the claimant failed or refused to receive the immunization or vaccination.

SECTION 10. Tennessee Code Annotated, Section 50-7-303(c), is amended by adding the following as a new subdivision:

(4) Benefits shall not be reduced or denied under this chapter to an otherwise eligible claimant for separation from employment due to the claimant's failure or refusal to receive a COVID-19 vaccine, as defined in § 14-1-101.

SECTION 11. Tennessee Code Annotated, Title 68, Chapter 5, Part 1, is amended by deleting §§ 68-5-115 - 68-5-117.

SECTION 12. The headings to sections, parts, and chapters in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 13. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are severable.

SECTION 14. This act takes effect upon becoming a law, the public welfare requiring it, and except as otherwise provided in § 14-5-101, this act applies to acts occurring on or after the effective date of this act.